

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20580

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

YELLOW PAGES INTEGRATED MEDIA ASSOCIATION
SUPPLEMENTAL COMMENTS

The Yellow Pages Integrated Media Association (“YPIMA”)¹ files these supplemental comments in the above captioned proceeding. Specifically, YPIMA has asked its member companies to attempt to quantify the cost of complying with the changes to the Commission’s do-not-fax rules which require written permission before sending a facsimile, even when there is an existing business relationship with the recipient.²

We believe the Commission has underestimated the significant cost businesses will have to assume to comply with the law. Indeed, the Report and Order in this proceeding states “We believe that even small businesses may easily obtain permission from existing customers who agree to receive faxed advertising...”³

Compliance with the new requirement of written permission takes more than walking into a place of business and asking the owner to sign a simple sheet of paper. Directory publishing is a large and complicated business, relying on personal contacts with millions of advertisers. YPIMA’s

¹ The Yellow Pages Integrated Media Association, formerly the Yellow Pages Publishers Association, is a global trade association based in Berkeley Heights, New Jersey, representing the Yellow Pages industry, both print and electronic. YPIMA member companies include publishers (of both Yellow and White Pages) and other businesses associated with the Yellow Pages industry.

² The data in these supplemental comments comes from large publishers, and is representative of the industry as a whole. Smaller publishers may have significantly different costs. YPIMA’s smaller publishers were unable to respond to the association’s request for information due, in part, to the inability to spend the time necessary to make these calculations. The impact of these rule changes will surely disproportionately harm smaller publishers.

³ *Report and Order In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket 02-278, at para 191.

latest figures show that there are approximately 3.4 million unique advertisers in the Yellow Pages in the United States, the vast majority of which are small businesses.⁴ Some directory companies have more than half a million advertisers. Many state tariffs require telephone companies to provide each business subscriber with a complimentary Yellow Pages listing.⁵ Each customer must be contacted directly, have the do-not-fax rules explained, and be sent or delivered a fax consent form.⁶ While directory publishers will not communicate with every advertiser by fax, many will be sent faxes with advertising rates, ad mock-ups, sales specials, and other customer-specific information that could be classified as an unsolicited commercial facsimile under the current rules. Indeed, because of the nature of the business and because directory advertising in general is a visual medium, faxes are an extremely effective method for communicating with advertisers. Prudent publishers will obtain consent-to-fax forms from every actual and potential advertiser.

Each directory salesperson must be trained in the do-not-fax rules. A database must be created to determine which advertisers permit faxes and which do not. Each time an advertiser is contacted, the database must be consulted and updated. For purposes of calculating a cost to the industry, YPIMA is using a very conservative figure of one half hour of aggregate time for employees involved in obtaining written permission to fax materials to an advertiser or potential advertiser.⁷ This includes training, the multiple sales contacts to obtain the consent, updating computer files, maintaining paper files, etc. This does not count the time the legal department will have to spend drafting do-not-fax releases, rewriting contracts, and answering complaints regarding alleged violations of the new written permission requirement.

⁴ Based on 2002 CRM data.

⁵ Publishers will contact these subscribers to ensure that their complimentary listing is accurate and placed correctly in the book. It is often much more efficient to verify listings by fax so that the subscriber can visually confirm that the listing is accurate and appears in the exact way the subscriber wants. As with any publishing or printing business, the customer needs to see the proof before approving for publication.

⁶ Or instructed how to otherwise signify written consent.

⁷ The actual time could be significantly more. For some sales contacts, it may take multiple calls or even a premise visit to obtain the written permission. For others, it may be accomplished with a single phone call.

In attempting to quantify what this means to the industry, companies have calculated a weighted average per hour salary for the various types of employees that could be involved in obtaining fax permission and maintaining a database of those who have given permission to be contacted by fax. Those employees include sales representatives, sales support, clerical, and customer service.⁸ The response from YPIMA's member companies for the weighted average for those employees ranges from approximately \$29.00 per hour to \$34.00 per hour.

As noted above, YPIMA's member companies believe that it will take at least one half hour on average per advertiser to obtain an initial written consent. This includes, but is not limited to, training, working with the advertiser to understand the consent, obtaining the consent, filing the consent, cataloguing the consent, and referring to the consent forms prior to sending a fax.

Currently, there are approximately 3.4 million unique Yellow Pages advertisers. The total cost figure, however, must include those potential advertisers for which there have been discussions about advertising in the directory, but did not actually purchase an ad this time around. A very conservative estimate is that 25% of the customer contacts do not result in a purchased advertisement in any given year. The actual numbers may be higher, estimated to be as high as 40%. Assuming the conservative 25% non-close rate, this means there are an additional 850,000 contacts that must consent to having a fax sent to them. For the industry, that equals 4,250,000 consent forms. Using the higher 40% non-close rate, an additional 1,360,000 contacts (above the 3,400,000 actual advertisers) must have consent forms sent to them, for a total of 4,760,000 consent forms.

Taking the conservative figure of one half hour per consent and the conservative figure of 4,250,000 contacts, each requiring a consent-to-fax form, based on the lower cost average figure of \$29.00, the low-end estimate of the cost to the entire industry in employee time is \$61,625,000.

⁸ Again, YPIMA has not attempted to quantify the legal expenses involved in this effort.

Using the higher estimates of \$34.00 and hour, and 4,760,000 contacts requiring consent forms, the cost to the industry for employee time could reach as high as \$80,920,000.

These cost estimates do not include any upgrades and software changes to the information technology and database programs currently in use. These upgrades could run into the millions of dollars for individual directory publishers. In addition, one company estimated that one additional sheet of paper added to every sales package will cost \$0.07. That includes copying, faxing or mailing, and storage. Based on 4,250,000 contacts, that will increase costs by \$297,500, or \$333,200 for 4,760,000 contacts. This calculates only the economic costs, and not the attendant environmental costs. Assuming that the advertiser keeps a copy of the consent, the sales representative keeps a copy, and one is archived for the company, this new rule change could require an additional 13,000,000 pieces of paper to be used. In an era when directory companies are making significant strides to reduce paper consumption,⁹ these rule changes run directly contrary to the industry's environmental conservation efforts.

Under the old rules, publishers would not be required to obtain written consent from these advertising customers, as the established business relationship created an implied permission. If directory publishers are required to obtain permission from each actual and potential advertiser, it could cost the industry nearly one hundred million dollars. Needless to say, such a burden on the industry is intolerable, and would cause considerable hardship.

The data presented in this filing represents the enormity of the task facing YPIMA's members. The Commission must recognize that this is a significant investment of time and money. As the Commission noted when it extended the deadline for compliance for do-not-fax, that it will take time, and consequently considerable resources, to comply with the do-not-fax changes. Given the significance of the task described herein, and the number of petitions pending, companies are

⁹ For example, directory publishers are using thinner paper and different fonts in an effort to use less paper.

understandably reluctant to spend the extraordinary resources that will be necessary to comply with the written permission requirement until it is clear that they must. We implore the Commission to act expeditiously in considering YPIMA's and other petitions for reconsideration. If the Commission is to deny these petitions, we ask that the Commission ensure that the industry has at least six months to put into place the necessary systems, processes and training to comply with these new rule changes.

YPIMA again respectfully requests that the Commission reinstate the established business relationship exemption for its do-not-fax rules. YPIMA again respectfully requests that the Commission clarify that facsimiles containing information pertaining to a product or service previously purchased or obtained by a customer in the past three years are not considered unsolicited facsimile advertisements. In addition, YPIMA respectfully requests that the Commission clarify that transaction-specific facsimiles are not considered unsolicited facsimile advertisements. Should the Commission adopt the proposed changes discussed above, the economic impact of the new do-not-fax rules will be a fraction of what it would otherwise cost the directory publishing industry.

Respectfully submitted,

Yellow Pages Integrated Media Association

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